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In re Application of:	:	
ABRAHAMSON, Christoffer, et al.	:	DECISION ON REFUND REQUEST
Application No.: 10/507,356	:	
PCT No.: PCT/GB03/01052	:	
Int. Filing Date: 12 March 2003	:	
Priority Date: 14 March 2002	:	
Attorney Docket No.: 1103326-0778	:	
For: METHOD OF ANALYZING A	:	
PHARMACEUTICAL SAMPLE	:	

This decision is issued in response to applicants' "Request For Fee Refund" filed 23 June 2005. No petition fee is required.

BACKGROUND

On 10 September 2004, applicants filed a transmittal letter for entry into the national stage accompanied by, among other materials, a Preliminary Amendment. The transmittal letter expressly instructed the United States Designated/Elected Office (DO/EO/US) to "charge the basic filing fee, excess independent claims fee (if applicable), excess total claims fee (if applicable), and multiple dependent claim fee (if applicable) to Deposit Account No. 23-1703" (as well as "any additional fees which may be required").

The application, as amended by the Preliminary Amendment filed 10 September 2004, included a multiple dependent claim and 62 total claims.

Based on applicants' 10 September 2004 authorization, the DO/EO/US charged Deposit Account No. 23-1703 the \$920 basic national fee and the \$290 fee for inclusion of a multiple dependent claim. The Deposit Account was not, however, charged the fee for the 42 excess total claims contained in the application.

On 06 April 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/903) requiring submission of an oath or declaration in compliance with 37 CFR 1.497, the \$130 surcharge for filing the oath or declaration later than thirty months after the priority date, and \$2100 in additional claims fees.

On 02 May 2005, applicants filed a response to the Notification Of Missing Requirements that included an executed declaration, the authorization to charge Deposit Account No. 23-1703 the required \$130 surcharge (and "any additional fees which may be due"), and a second

Preliminary Amendment. With respect to the requirement of \$2100 for extra claims fees, applicants noted that their original submission of 10 September 2004 expressly authorized a charge to Deposit Account No. 23-1703 for any excess total claims fees that were applicable. Applicants go on to state that any excess total claims fee charged herein should be calculated based on the claims as amended in the second Preliminary Amendment filed therewith (the second Preliminary Amendment reduces the total claims in the application to 32, that is, 12 excess claims).

After receiving applicants response, the DO/EO/US charged Deposit Account \$130 as the surcharge for the late declaration and \$2100 as the fee for excess total claims.

On 13 May 2005, the DO/EO/US mailed a "Notification Of Acceptance (Form PCT/DO/EO/903) identifying 02 May 2005 as the "Date Of Receipt Of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) Requirements" and the "Date Of Completion Of All 35 U.S.C. 371(c) Requirements."

On 23 June 2005, applicants filed the "Request For Fee Refund" considered herein. The refund request seeks a refund of \$1500, the amount that applicants assert Deposit Account No. 23-1703 was over-charged with respect to the fee for excess total claims.

DISCUSSION

As noted above, applicants original submission of 10 September 2004 expressly authorized a charge to Deposit Account No. 23-1703 for any applicable excess total claims fee. As of that date, the application contained 42 excess claims, and the applicable fee was \$18 for each such claim. Accordingly, the appropriate fee for excess total claims for this application is \$756 (\$18 multiplied by 42). Applicants' second Preliminary Amendment (filed 02 May 2005), which reduces the number of excess claims herein to 12, does not reduce the number of total claims subject to the excess total claims fee. This is because the authorization to charge the Deposit Account for the excess claims fees, filed 10 September 2004, is considered the date of payment for such fees, and the second Preliminary Amendment was not submitted until months later (see Manual Of Patent Examining Practice § 1893.01(c)).

Based on the above, Deposit Account No. 23-1703 should have been charged \$756 as the appropriate fee for excess total claims herein. As set forth in the refund request and noted above, applicants were charged \$2100 for this fee.¹ Applicant is therefore entitle to a refund of \$1344, the difference between the proper fee of \$756 fee and the charged fee of \$2100.

¹ This amount was calculated using the current fee of \$50 for each excess claim. However, the applicable fee here is \$18 for each excess claim, as this was the fee in effect when applicants submitted the authorization to charge for such fees on 10 September 2004.

CONCLUSION

Applicants' refund request is **GRANTED** to the extent discussed herein.

The fee for excess total claims is considered to have been paid on 10 September 2004 when applicants authorized a charge to Deposit Account No. 23-1703 for such fees. At the time of payment, the appropriate amount for this fee was \$756 (\$18 for each of the 42 excess claims of record at such time).

Deposit Account No. 23-1703 will be credited with a refund of \$1344. This amount represents the difference between the appropriate fee for excess total claims herein (\$756) and the amount that applicants were previously charged for this fee (\$2100).



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